

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BRYAN HIYAS,

Plaintiff,

V.

ALLY FINANCIAL INC., UNITED STATES
CORP., et al.,

Defendants.

Case No. 2:24-cv-00780-ART-EJY

ORDER

and

REPORT AND RECOMMENDATION

Pending before the Court is Plaintiff's application to proceed *in forma pauperis* ("IFP") together with his Complaint. ECF Nos. 1, 1-1.

I. Application to Proceed *in forma pauperis*

Plaintiff submitted the affidavit required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. ECF No. 1. Thus, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a).

II. The Screening Standard

Upon receiving a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). However, pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

A federal court must dismiss a plaintiff's claim if the action "is frivolous or malicious[,] fails to state a claim on which relief may be granted[,] or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). The standard for dismissing a complaint for failure to state a claim is established by Federal Rule of Civil Procedure 12(b)(6). When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions to cure its deficiencies unless it is clear from the face of the complaint that the

1 deficiencies cannot be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
 2 1995).

3 In making this determination, the Court takes as true all allegations of material fact stated in
 4 the complaint, and the court construes them in the light most favorable to the plaintiff. *Warshaw v.*
 5 *Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a pro se complainant are held to less
 6 stringent standards than formal pleadings drafted by lawyers. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980).
 7 While the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must
 8 provide more than mere labels and conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
 9 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Additionally,
 10 a reviewing court should “begin by identifying pleadings [allegations] that, because they are no more
 11 than mere conclusions, are not entitled to the assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662,
 12 679 (2009). “While legal conclusions can provide the framework of a complaint, they must be
 13 supported with factual allegations.” *Id.* “When there are well-pleaded factual allegations, a court
 14 should assume their veracity and then determine whether they plausibly give rise to an entitlement
 15 to relief.” *Id.* “Determining whether a complaint states a plausible claim for relief . . . [is] a context-
 16 specific task that requires the reviewing court to draw on its judicial experience and common sense.”
 17 *Id.*

18 Finally, all or part of a complaint may therefore be dismissed sua sponte if that person’s
 19 claims lack an arguable basis either in law or in fact. This includes claims based on legal conclusions
 20 that are untenable (e.g., claims against defendants who are immune from suit or claims of
 21 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful
 22 factual allegations (e.g., fantastic or delusional scenarios). *Neitzke v. Williams*, 490 U.S. 319, 327–
 23 28 (1989); *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

24 **III. Plaintiff Sues Immune Defendants**

25 To the extent Plaintiff seeks money damages against the United States, the Securities and
 26 Exchange Commission, the Federal Trade Commission, and the Consumer Financial Protection
 27 Bureau, Plaintiff’s claims fail as a matter of law as each of these Defendants is immune from suit.
 28 *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985) (sovereign immunity protects the United

1 States, as well as its agencies, officers, and employees from actions for money damages, unless there
 2 has been an express waiver of immunity and consent to suit). *See also Sprecher v. Graber*, 716 F.2d
 3 968, 973 (2d Cir.1983) (government agencies, including the SEC are entitled to sovereign immunity
 4 for all suits for money damages); *Trudeau v. FTC*, 456 F.3d 178, 186 (D.C. Cir. 2006) (citations
 5 omitted); *Western Shoshone Nat. Council v. United States*, 408 F.Supp.2d 1040, 1048 (D. Nev.
 6 2005). Plaintiff has not carried and cannot carry his burden of pointing to a waiver of sovereign
 7 immunity and, in light of the case law regarding the same, the Court finds Plaintiff will not be able
 8 to do so. ECF No. 1-2. *Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983) (per curiam), *cert.*
 9 *denied*, 466 U.S. 958 (1984).

10 Based on the foregoing, the Court recommends dismissal with prejudice of Plaintiff's claims
 11 against the United States, the Securities and Exchange Commission, the Federal Trade Commission,
 12 and the Consumer Financial Protection Bureau.

13 **IV. Plaintiff Fails to State a Claim Against Paramount Recovery Service and Ally Financial
 14 Inc.**

15 Plaintiff's Complaint fails to state a claim for relief against Paramount Recovery Service
 16 ("Paramount") and Ally Financial Inc. ("Ally"). Rule 8 of the Federal Rules of Civil Procedure
 17 requires a complaint to plead sufficient facts to give a defendant fair notice of the claims against him
 18 and the grounds upon which it rests. *Yamaguchi v. United States Department of Air Force*, 109 F.3d
 19 1475, 1481 (9th Cir. 1997) (citations omitted). "[A] pleading may not simply allege a wrong has
 20 been committed and demand relief." *Sherrell v. Bank of Am., N.A.*, Case No. CV F 11-1785-LJO
 21 (JLT), 2011 WL 6749765, at *4 (E.D. Cal. Dec. 22, 2011).

22 Here, Plaintiff's allegations fail to plead an identifiable cause of action against Paramount or
 23 Ally. While Plaintiff's Complaint says his car was repossessed and his reputation ruined, Plaintiff
 24 pleads no facts supporting that (1) Paramount or Ally engaged in conduct resulting in these harms,
 25 (2) these harms resulted in a violation of federal law or the United States Constitution, or (3) the
 26 Court may exercise diversity jurisdiction over his claims.¹ Moreover, Plaintiff's citations to
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28 ¹ The U.S. District Courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or
 treaties of the United States." 28 U.S.C. § 1331. Federal district courts also have original jurisdiction over civil actions

1 numerous statutes and attached documents adds to an indecipherable set of allegations. Although
 2 pro se pleadings are construed liberally, Plaintiff must present factual allegations sufficient to state
 3 a plausible claim for relief. *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010). Plaintiff's
 4 Complaint fails to meet this standard.

5 In the absence of a clear set of facts alleged against Paramount or Ally establishing one or
 6 more cause of actions over which the Court can exercise jurisdiction, Plaintiff's claims cannot
 7 proceed. *Benitez v. Schumacher*, Case No. 2:20-cv-00396-FMO (SHK), 2020 WL 6526352, at *12
 8 (C.D. Cal. May 4, 2020).

9 **V. Order**

10 IT IS HEREBY ORDERED that Plaintiff's Application to Proceed *in forma pauperis* (ECF
 11 No. 1) is GRANTED.

12 IT IS FURTHER ORDERED that Plaintiff's claims against Paramount Recovery Service
 13 and Ally Financial Inc. are dismissed without prejudice and with leave to amend.

14 IT IS FURTHER ORDERED that if Plaintiff chooses to file an amended complaint Plaintiff
 15 must do so no later than **May 31, 2024**. The amended complaint must be complete in and of itself.
 16 The amended complaint must not rename the United States or federal agencies seeking money
 17 damages as these Defendants are immune from suit. Plaintiff may attempt to state a claim under
 18 federal law or based on diversity jurisdiction against Paramount Recovery Service or Ally Financial
 19 Inc. Plaintiff's amended complaint must comply with Federal Rule of Civil Procedure 8. Plaintiff
 20 must identify the specific wrongs committed by each Defendant establishing an entitlement to relief.

21 **VI. Recommendation**

22 IT IS HEREBY RECOMMENDED that Plaintiff's claims against the United States, the
 23 Security and Exchange Commission, the Federal Trade Commission, and the Consumer Financial
 24 Protection Bureau be dismissed with prejudice as these defendants are immune from suit for money
 25 damages.

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 28 in diversity cases "where the matter in controversy exceeds the sum or value of \$75,000" and where the matter is between
 "citizens of different States." 28 U.S.C. § 1332(a)

1 IT IS FURTHER RECOMMENDED that if Plaintiff does not file an amended complaint by
2 or before May 31, 2024, or Plaintiff's amended complaint fails to plead claims against parties over
3 which the Court can exercise jurisdiction, the Court should dismiss this case in its entirety without
4 prejudice.

5 Dated this 24th day of April, 2024.

6 
7 ELAYNA J. YOUCRAH
8 UNITED STATES MAGISTRATE JUDGE
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10 **NOTICE**

11 Under Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
12 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held
13 that the courts of appeal may determine that an appeal has been waived due to the failure to file
14 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
15 held that (1) failure to file objections within the specified time and (2) failure to properly address
16 and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal
17 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
18 p1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

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